DEBRA WILLIAMSON-EDWARDS, et al., Appellants	:	Order Docketing and Dismissing Appeal
v.	:	
	:	Docket No. IBIA 96-73-A
ACTING MINNEAPOLIS AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS, Appellee	:	July 19, 1996

On May 21, 1996, the Board of Indian Appeals received a notice of appeal from Debra Williamson-Edwards; Gary Loonsfoot, Sr.; Doreen Baron; and Linda Kramer. Appellants stated that they were enrolled members of the Keweenaw Bay Indian Community (Tribe) and that they sought review of an April 18, 1996, decision of the Acting Minneapolis Area Director, Bureau of Indian Affairs, concerning Keweenaw Tribal Council Resolutions KB-467-95 and KB-501-95, relating to tribal voting rights.

The materials attached to appellants, notice of appeal indicated that the Tribal Council had not submitted the resolutions for review by BIA but that appellants, in the belief that BIA review was required under the Tribe's Constitution, had requested the Superintendent, Michigan Agency, to review the resolutions. The Superintendent declined to do so, and the Area Director affirmed her decision.

Noting that the threshold question in the appeal was whether individual tribal members have standing before the Board to appeal a BIA decision declining to review a tribal enactment, the Board ordered appellants to show that they have standing here. The Board's order stated in part:

> The Board has not addressed this precise question. However, the Board has consistently held that tribal members lack standing to appeal a BIA decision approving or disapproving a tribal ordinance. The principles upon which those decisions were premised would seem to apply here as well. See, in particular, Hunt v. Aberdeen Area Director, 27 IBIA 173 (1995), and Feezor v. Acting Minneapolis Area Director, 25 IBIA 296 (1994).

The Board also requested the Area Director to furnish copies of the Tribe's Constitution and the two resolutions at issue. These documents and appellants' response to the Board's order have now been received.

Appellants' response discusses at some length the concept of standing in the Federal courts, as developed in such cases as Flast v. Cohen, 392 U.S. 83 (1968), and Baker v. Carr, 369 U.S. 186 (1962). Appellants contend that they should have standing here under the principles of those

cases. They appear to disapprove of the Board's standing decisions in cases such as Hunt and Feezor because, they suggest, the Board is "using 'standing' in a manner foreign to its usage in the national jurisprudence" (Appellants' Response at 11). In appellants' view, the Board's decisions in Hunt and Feezor were not really based upon standing, but upon a policy of deference to a tribe's right to govern itself.

Appellants correctly perceive that the Board's decisions in this area are grounded in the Federal policy of respect for tribal self-government. See, e.g., Feezor, 25 IBIA 298. In furtherance of this policy, the Board has recognized that individuals whose primary complaint is with a tribal enactment belong in a tribal forum rather than before this Board. E.g., Hunt, 27 IBIA at 178. At the same time, the Board recognizes that a tribe whose enactment is the subject of a BIA decision has a right to appeal the BIA decision to the Board. E.g., Shakopee Mdewakanton Sioux Community v. Acting Minneapolis Area Director, 27 IBIA 163 (1995). The Board uses the term "standing" to describe the distinction between appellants who are entitled to pursue an appeal of a particular BIA decision before the Board and those who are not so entitled. While the Board's "standing" analysis in its tribal government cases may differ from the analysis in cases such as Flast v. Cohen and Baker v. Carr, 1/ it is well-grounded in the decisions of the Supreme Court which are most relevant to the issue here. See, e.g., Iowa Mutual Insurance Co. v. LaPlante, 480 U.S. 9 (1987), and National Farmers Union Insurance Cos. v. Crow Tribe, 471 U.S. 845 (1985).

As the Supreme Court, the lower Federal courts, and this Board have held, appellants who wish to challenge a tribal action must seek relief in a tribal forum before a Federal forum may assert jurisdiction over the matter. In addition to Iowa Mutual Insurance Co. and National Farmers Union Insurance Cos., see, e.g., Johnson v. Acting Minneapolis Area Director, 28 IBIA 104 (1995), and cases cited therein; Zinke & Trumbo, Ltd. v. Phoenix Area Director, 27 IBIA 105 (1995), and cases cited therein. Appellants' ultimate goal here is to challenge the substance of Resolutions KB-467-95 and KB-501-95. In that endeavor, they clearly belong before a tribal forum. In this appeal, appellants have sought to bypass the tribe and even to usurp the Tribal Council's prerogative to submit, or not to submit, its resolutions to BIA for review. Since the question of whether or not the resolutions require BIA review is a matter of tribal law, appellants' proper recourse is, again, to a tribal forum. It appears likely that, even if appellants had been able to show that they have standing in this case, their appeal might still require dismissal for failure to exhaust tribal remedies.

1/ There is, of course, a substantial difference between the posture of the cases addressed in these Supreme Court decisions and the posture of the case presently before the Board. In Flast v. Cohen and Baker v. Carr, rights claimed under Federal law were sought to be enforced in Federal court. Here, appellants are seeking to enforce rights claimed under tribal law in a Federal administrative forum.

The Board concludes that appellants have failed to show that they have standing here. Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, this appeal is docketed but is dismissed for lack of standing.

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Anita Vogt
Administrative Judge

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Kathryn A. Lynn
Chief Administrative Judge